

In the High Court of Judicature at Madras

Reserved on: 09.10.2014
Delivered on: 16.04.2015

CORAM:

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

Company Appeal No.3 of 2011

Mr.N.R.Harikumar

... Appellant

Versus

1. WW Apparels (India) Private Limited,
Tirupur- 641 605.
2. Ferris Richard Christopher
3. Worldwide Garment Sourcing Limited,
(Formerly WW Overseas Limited),
St. Johns Center, 110, Albion Street,
Leeds LS 2 8LA, United Kingdom.
4. Grant Thornton UK LLP,
Chartered Accountants.

... Respondents

Company Appeal filed under Section 10F of Companies Act, 1956,
against the order dated 14.12.2010 in C.P.No.27 of 2007 passed by the
Additional Principal Bench of the Company Law Board, Chennai.

For Appellant : Mr.H.Karthik Seshadri
For M/s Iyer & Thomas

For Respondents 1&2 : Mrs.Ambili Menon

For Respondents 3&4 : Mr.Sanjay Kumar

JUDGMENT

This is an appeal filed under Section 10-F of the Companies Act, 1956 challenging an order passed by the Company Law Board, dismissing the petition filed by the appellant under Section 397, 398 and 402 of the Companies Act alleging oppression and mismanagement.

2. I have heard Mr.H.Karthik Seshadri, learned counsel for the appellant, Mrs.Ambili Menon, learned counsel for the respondents 1 and 2 and Mr.Sanjay Kumar, learned counsel for the respondents 3 and 4.

3. The brief facts leading to the filing of the above appeal are :

(i) The appellant herein was carrying on business in partnership and was actually acting as a buying agent of the third respondent. The third respondent is a company incorporated under the laws of England. The first respondent was incorporated in India on 7.8.2002 as a private limited company, with a different name. Thereafter the first respondent company acquired the partnership business of the appellant in November 2002.

(ii) The authorised capital of the first respondent as per the audited balance sheet as on 31.3.2003 was Rs.2 Crores, divided into 20 lakhs shares of Rs.10 each. The issued, called up, subscribed and paid up capital of the first respondent was Rs.64,32,970/-, as on 31.3.2003. But, it rose up to Rs.1,85,87,700/- as on 31.3.2005;

(iii) The first respondent later became a subsidiary of the third respondent. The appellant and the second respondent became its directors;

(iv) It appears that one of the secured creditors of the third respondent company namely HSBC Bank, initiated action against the third respondent in England, which resulted in the appointment of the fourth respondent as Joint Administrative Receivers, on 20.4.2006. The Joint Administrative Receivers sold all the shares held by the third respondent in the first respondent company to the second respondent for just one British Pound Sterling.

(v) Upon coming to know of the said act and terming it as an act of oppression and a breach of his pre-emptive rights, the appellant filed a petition in C.P.No.27 of 2007 on the file of the Company Law Board under Sections 397 and 398 of the Companies Act. Along with the main petition, the appellant also took out three interim applications, one in C.A.No.99 of 2007 for impleading 3 individuals, another in C.A.No.123 of 2007 for punishing the respondents for not providing copies of statutory records as per the order dated 16.04.2007 and a third in C.A.No.135 of 2007 for a declaration that the transfer of the Registered Office from Coimbatore to Tirupur was null and void.

(vi) It appears that on 04.02.2008, the Company Law Board directed the parties to work out the possibility of a settlement. The appellant sought certain details, before he could initiate the talks of settlement. The Company Law Board passed an order on 28.04.2008, directing the respondents to furnish all details by 07.05.2008 and to list the matter for hearing on 19.06.2008 and 20.06.2008 if there was

no settlement.

(vii) But no settlement took place and hence the matter came to be adjourned from time to time. When the petition was taken up in 2009, the appellant moved an application in C.A.No.32 of 2009, for an amendment. By an order dated 21.08.2009 passed in the said application, the Company Law Board directed the respondents to furnish the details regarding allotment of shares by 11.09.2009.

(viii) According to the appellant, there was a change of Judicial Member and the case was later posted for hearing on the preliminary issue of maintainability. The issue of maintainability was raised on the ground that what was under challenge was a transfer of shares that took place under the Insolvency Laws of the United Kingdom and that therefore, the Company Law Board in India would not have jurisdiction to deal with the same.

(ix) However, the appellant claims that he argued only the applications for impleading and amendment.

(x) Thereafter the Company Law Board took up the main petition for adjudication and dismissed the same by an order dated 14.12.2010. Aggrieved by the said order, the appellant is before this Court.

4. As seen from para 1 of the order of the Company Law Board, the Company Law Board took up for consideration two issues namely:-

(a) whether the Company Law Board had jurisdiction to entertain a petition with regard to the shares of a foreign company (holding company) held in an Indian company (subsidiary company); and

(b) whether the appellant was barred by the principles of estoppel, waiver, laches etc., in seeking enforcement of his pre-emptive rights or not.

5. Towards the end of para 8 of its decision, the Company Law Board held that it had jurisdiction to entertain a dispute regarding the sale in United Kingdom, of the shares of the first respondent held by the third respondent. After holding so, the Company Law Board recorded a finding on facts that the appellant was aware of the appointment of Receiver through Annexures A14, A15 and A16 and that the appellant ought to have availed the remedy under the laws of United Kingdom. In other words, the Company Law Board held in para 11 that the question as to whether the Receiver made best efforts to get maximum relief to the creditors of the third respondent and the question whether there was proper advertisement before sale of the shares, are not issues that would come within the jurisdiction of the Company Law Board in Chennai to adjudicate. In addition to this finding, the Company Law Board also held that the appellant was guilty of delay and laches and hence lost his rights.

6. Interestingly, the Company Law Board also recorded in para 15 of its order that the appellant could not make out a prima facie case of oppression, other than the violation of pre-emptive rights. On these grounds, the Company Law Board rejected the petition and the appellant is before this Court.

7. Since an appeal under Section 10-F of the Companies Act, 1956 can be maintained only on questions of law, I have to see whether the appeal raises any question of law. In the Memorandum of Grounds of Appeal, the appellant has provided a host of questions of law as having arisen in the appeal. But I am of the view that the appeal raises only the following questions of law:

(i) Whether the Company Law Board was right in holding that it had no jurisdiction to test the fairness of the procedure adopted by the Joint Receivers in England for the sale of the shares, even after holding the main petition to be maintainable in law?

(ii) Whether the Company Law Board was right in holding that the appellant was guilty of acquiescence, waiver and laches?

(iii) Whether the Company Law Board was right in throwing out the plea of pre-emptive right of purchase of the shares guaranteed to the appellant under the Articles of Association of the Company?

QUESTION NO.(i):

8. It is seen from the order of the Company Law Board that the respondents raised a preliminary objection about the maintainability of the Company Petition on the ground that the sale, of the shares of a company incorporated in United Kingdom, under the Insolvency Laws of United Kingdom, can be challenged only before the Courts in the United Kingdom. While dealing with the said contention, the Company Law Board held in para 8 that the sale of assets/properties of a company incorporated in United Kingdom would be governed by the laws of United Kingdom and not by the Indian Companies Act. However, the Company Law Board held that the sale of the shares of a company incorporated in India, held by a company incorporated in United Kingdom would be governed by the Indian Companies Act. After pointing out that the principle of *lex situs* had to be applied to the shares in question, the Company Law Board held that an Indian Court would have jurisdiction even over foreign companies, if they carry on business within the jurisdiction of the Courts in India. Therefore, the Company Law Board concluded in para 8 that the Bench had jurisdiction to entertain a dispute regarding the sale of shares of the first respondent company held by the third respondent.

9. But unfortunately, after having held so, the Company Law Board went on to hold in para 11 that if the appellant was aggrieved by the procedure adopted in England for the sale of the assets of the third

respondent company, the remedy was to seek appropriate reliefs under the laws of United Kingdom. To come to the said conclusion, the Company Law Board reasoned that the appellant himself had reserved his rights to initiate suitable legal proceedings in United Kingdom under the Insolvency Laws of United Kingdom.

10. But the Company Law Board failed to look into one important aspect. The shares of the first respondent company held by the third respondent, no doubt constituted a property of the third respondent. But the extent to which the third respondent was entitled to transact upon the said property or deal with the said property, was always subject to the Indian Laws. This can be appreciated, if we have a careful look at some of the provisions of the Indian Companies Act, 1956.

11. Section 2(46) of the Companies Act, 1956 defines "share" to mean a share in the share capital of a company including stock except where a distinction between shares and stocks is expressed or implied. The first respondent is admittedly a private company within the meaning of Section 3(1)(iii) of the Companies Act, 1956. Therefore, there is a restriction on the right to transfer its shares. Under Section 36(1) of the Act, the Memorandum and Articles, when registered, shall bind the company and the members thereof to the same extent as if they respectively had been signed by the Company and by each member and contained covenants on its part and his part to observe all the provisions of the Memorandum and of the Articles.

12. Therefore, the third respondent, by virtue of being a shareholder in the first respondent company was bound by the terms and conditions of Memorandum and Articles of Association. Even the third respondent cannot commit a breach of any of the terms and conditions contained in the Articles of Association.

13. Under Section 108(1) of the Act, a company shall not register a transfer of shares in a company unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee has been delivered to the company along with the certificate.

14. A detailed procedure is prescribed under Section 111 as to when a company can refuse to register the transfer of or the transmission by operation of law, of the right to any shares. There are provisions for maintenance of Register of Members and for filing of Annual Returns, containing the details including the details of the members.

15. Therefore, it is clear that any transfer or even a transmission by law, can take place only in accordance with the procedure prescribed in the Companies Act, 1956. What the Company Law Board has omitted to see is the fact that despite the procedure adopted by the Insolvency Court in England being in accordance with the Insolvency Laws of United Kingdom, the transfer was in respect of a property that was subject to the Indian Law. Therefore, the Indian law had to be applied, for the purpose of statutory recognition of such a transfer. In other words, if the company, by virtue of the Articles of Association and the power conferred thereunder refuses to register the sale ordered by the Insolvency Court in England, the purchaser cannot do anything except to come to India and seek redressal in the manner provided by the Indian Companies Act.

16. The Company Law Board has omitted to see another important aspect. Since the first respondent is a Private Limited Company, there were no takers for the shares held by the third respondent in the first respondent company, before the Insolvency Court in United Kingdom. Consequently, the the second respondent, who happens to be the Director of the first respondent company became the loan bidder and he could knock off a large number of shares, literally for a song, namely a token consideration of one Pound Sterling.

17. The Company Law Board had omitted to see that what was challenged by the appellant was not really the procedure adopted by the Insolvency Court in United Kingdom, in bringing the shares to sale. What was agitated by the appellant was that the second respondent, who was a Director of the first respondent, committed a breach of trust and kept the appellant away from the whole episode and bought all the shares for a token consideration. Suppose any one other than the second respondent had purchased the shares, they would have faced a formidable task in getting the transfer recognized and registered in India. Therefore, the attack of the appellant was not really to be construed as an attack on the procedure adopted by the Insolvency Court in United Kingdom. It was an attack on the conduct of a Director, who held a fiduciary relationship and who was bound by the Articles of Association of the Company.

18. Whether it is the Insolvency Law of England or the Insolvency Law of India the role of the Receiver is almost the same. Fundamentally a Receiver appointed by an Insolvency Court cannot do more than what the owner of the property himself can do. If a property that comes into the hands of a Receiver is not transferable by the owner himself, it would remain as such even at the hands of the Receiver. Therefore, the first question of law is to be answered in favour of the appellant.

QUESTION NO.(ii):-

19. The second question of law is as to whether the Company Law Board was right in holding that the appellant was guilty of acquiescence, waiver and laches. It is contended by the respondents that waiver is a question of fact and that once the Company Law Board has recorded a finding on the question of waiver, it is not possible for this Court to sit on appeal over the said finding of fact, especially in view of Section 10F of the Companies Act, 1956 which permits an appeal only on a question of law. The respondents rely upon the decision of the Supreme Court in Motilal Padampat Sugar Mills Co. Ltd., vs. State of Uttar Pradesh AIR 1979 SC 621, where it was held that waiver is a question of fact and it must be properly pleaded and proved.

20. It is true that all rights, including statutory rights can be waived, provided no public interest is involved. A statutory right can be waived subject to certain conditions. But waiver must be specifically pleaded and the burden of proof is upon the party pleading the same to show that a waiver actually took place. Waiver should be a voluntary and intentional relinquishment of a known right, as held in Provosh Chandra Dalui v. Biswanath Banerjee [AIR 1989 SC 1834]. But the party to whom waiver is attributed should be aware of the right that he was waiving.

21. As held by the Privy Council in Vellayan Chettiar vs. Government of Province of Madras [AIR 1947 PC 197] relied upon by the respondents, individual rights flowing out of statutory provisions can also be waived. Therefore it is the stand of the respondents that the pre-emptive right of purchase conferred by the Articles of Association and the mandatory provisions of Section 108 of the Companies Act, 1956 can also be waived.

22. But the case of the appellant is that he had no knowledge about the proposal to sell the shares at all. Knowledge is attributed to the appellant, only through a Board Resolution dated 18.09.2006. But the meeting of the Board was purportedly held at Leeds in the United Kingdom. According to the appellant, he had no notice of the meeting of the Board, despite the appellant being the Managing Director. Therefore, the appellant contends that the said Board Meeting held on 18.09.2006 and the Resolution passed therein are all void in view of the decision of the Supreme Court in Parameswari Prasad Gupta vs. Union of India [(1973) 2 SC 543]. It is also contended by the appellant that since the provisions of Section 108 have been held by the Supreme Court to be mandatory, in its decision in Mannalal Khetan vs. Kedar Nath Khetan [AIR 1976 SC 536], the failure to follow the said provision would be fatal to the case of

the respondents and that the plea of waiver set up on the basis of such an action, cannot hold good especially when the appellant had no knowledge of the proceedings.

23. I have carefully considered the rival submissions. There is no second opinion about the fact that the Articles of Association of a Private Company constitute a contract inter se between the shareholders. Therefore, any transfer of shares should be in accordance with the Articles of Association. As held by the Supreme Court in Smt. Claudie Lila Parulakar vs. Sakal Papers Pvt. Ltd., [AIR 2005 SC 4074], the requirement of the Articles of Association must be complied with, before a valid transfer could be effected.

24. It is also true that a contractual right can always be waived and a statutory right can be waived subject to a few exceptions. In Krishna Bahadur vs. Purna Theater [(2004) 8 SCC 229], the Supreme Court pointed out the distinction between the estoppel and waiver. While estoppel is a rule of evidence, waiver is contractual. But to constitute waiver, it must be clearly established that a party against whom waiver is set up was fully aware of his rights, but had agreed not to assert the right, for a consideration.

25. In the case on hand, there was absolutely no evidence for the Company Law Board to come to the conclusion that the appellant was aware of the intended sale and that he still failed to exercise the right, leading to waiver.

26. As an alternative to the plea of waiver, the respondents pleaded estoppel. According to the respondents, estoppel by conduct is established in this case. In joint Chief Controller of Imports and Exports vs. H.R. Trading Company [(1964) ILR 2 Mad. 224], relied upon by the learned counsel for the respondents, the Court quoted from Halsbury's Laws of England to the effect that when one party has by his words or conduct, made to another a promise or assurance which was intended to effect the legal relationship between them and then, once the other party has taken him for his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relationship.

27. But as I have pointed out earlier, estoppel is a rule of evidence. It is also a rule of equity intended to operate as a check on the conduct of parties. Therefore, there must be clear evidence to show that there was estoppel by conduct.

28. The finding of the Company Law Board that there was acquiescence on the part of the appellant and that the appellant is

guilty of laches, does not appear to be correct. In B.L.Sreedhar vs. K.M.Munireddy [AIR 2003 SC 578], the Supreme Court summarized the doctrine of acquiescence in the following words:-

"If a person having right, and seeing another person about to commit, or in the course of committing an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act." (Duke of Leeds v. Earl of Amherst 2 Ph. 117 (123) (1846). This is the proper sense of the term acquiescence, "and in that sense may be defined as acquiescence, under such circumstances as that assent may be reasonably inferred from it, and is no more than an instance of the law of estoppel by words or conduct." (De Buasche v. Alt.L.R.8 Ch.D.286 (1314). Acquiescence is not a question of fact but of legal inference from facts found (Lata Beni Ram v. Kundan Lall. L.R.261 Ind.Ap.58(1899)).

29. Merely because estoppel was given an elevated status, along with other equitable principles such as election and family settlement, in S.Shanmugam Pillai vs. K.Shanmugam Pillai [1972 AIR SC 2069], the fundamental requirement for invoking this principle of equity cannot be dispensed with. I am actually surprised at the respondents setting up the equitable plea of estoppel, when what the respondents have done cannot fall under the category of equity. The entire shareholding of the third respondent in the first respondent has been sold for just one Pound Sterling, behind the back of the appellant and hence it is not for the respondents to plead estoppel against the appellant.

30. In Indira Bai vs. Nand Kishore [1990 (4) SCC 668], the Supreme Court held that estoppel is a rule of equity flowing out of fairness striking on behaviour deficient in good faith. Therefore, what is important is that it is a rule of equity and that it must flow out of fairness. I do not know how the respondents can be said to have acted with fairness. In the course of hearing of this appeal, the appellant expressed willingness to purchase the entire shareholding for even Rs.one Crore, but the second respondent was not willing to accept it though he had purchased it for just one Pound Sterling. Therefore, it is not for the respondents who have acted unfairly to invoke a rule of equity flowing out of fairness.

31. In fact in the very same decision the Supreme Court pointed out that there can be no estoppel against statute and that what is statutorily illegal and void, cannot be enforced by resorting to the rule of estoppel. Hence the respondents cannot set up estoppel against the appellant.

32. Lastly, let me take up the question of laches. I do not know how the plea of laches is set up against the appellant. If we have a look at the sequence of events, it is seen that the fourth respondent was appointed as Administrative Receiver for the third respondent company on 20.04.2006. It appears that paper publications were effected in the Financial Times on 05.05.2006 and 23.05.2006 and the shares were sold on 21.09.2006.

33. The respondents have taken a plea that there was a Board Meeting. But it happened in United Kingdom. I do not know why, despite the first respondent being a Private Limited Company, containing a restriction regarding transfer of shares, the offer to sell the shares was not made to the appellant. The Company Petition itself was filed in March 2007, within about four months or so of the sale. Therefore, I do not know how the appellant could be held to be guilty of laches.

34. Even according to the Company Law Board, the appellant was informed only on 03.08.2006 that the second respondent was likely to buy out the company and that thereafter a Board Meeting was held on 18.09.2006. The Company Law Board relied upon a mail dated 09.10.2006 sent by the appellant to the Receiver. In the mail, the appellant seems to have protested only about the non-payment of his expenses. Therefore, the Company Law Board came to the conclusion that the appellant did not object to the sale of the shares.

35. But the above conclusion of the Company Law Board is wholly unsustainable. What the appellant wrote after the event had happened, is not of great significance than what the appellant did before the event. Within four months of the sale, the appellant had approached the Company Law Board. The principles of estoppel, acquiescence etc. cannot be invoked on the basis of the conduct that was exhibited post facto. It is only that conduct on the part of a person before and at the time of commission of the act that may constitute acquiescence, estoppel etc.

36. If the time taken by the appellant from August 2006 when the transfer took place, up to March 2007 when he filed the Company Petition, would constitute a delay, defeating the very valuable rights of the appellant, I do not know when the appellant ought to

have approached the Company Law Board.

37. The learned counsel for the respondents 3 and 4 relied upon the "maxims of equity" elicited in Snell's Principles of Equity (27th Edn.) which say (1) he who comes into equity must come with clean hands and (2) delay defeats equities or equity aids the vigilant and not the indolent. *Vigilantibus, non dormientibus, jura subveniunt*". But I do not know how these maxims can be applied to the case on hand. The appellant had approached the Company Law Board within four months. The second respondent is a person who was aware of the prescription contained in the Articles of Association of the first respondent company. It was his duty to have pointed out to the Receivers that the appellant also had a preemptive right. Therefore, it is not up to the second respondent to set up these pleas against the appellant.

38. The second respondent has filed a counter affidavit. The focus in the counter affidavit is primarily on the extensive investment made by the second respondent in the first respondent company and the amount realizable by him. But unfortunately, one wrong cannot set right another wrong. It is out of the scope of the present petition to find out whether the appellant is guilty of any mismanagement or whether the second respondent has suffered a huge loss or not. The Company Law Board was primarily concerned about the validity of the sale of shares of the third respondent company in the first respondent company to the second respondent for a nominal amount of one Pound Sterling. It is this issue that has to be addressed, independent of the other transactions. Therefore, the second question of law has also to be answered only in favour of the appellant.

QUESTION NO.(iii)

39. The last question of law that arises for consideration is as to whether the Company Law Board was right in throwing out the plea of pre-emptive right of purchase of the shares guaranteed to the appellant under the Articles of Association of the Company.

40. There is no dispute about the fact that Article 7 of the Articles of Association contains a specific provision with regard to transfer of shares and their valuation. Article 8 mandates that without the sanction of the Board of Directors, no transfer can be effected. The only exception to Article 8 is that the prescription contained therein will not apply to the transfer of shares of one member to another under the preemptive right.

41. The reliance placed by the respondents upon the alleged meeting of the Board of Directors held on 18.09.2006, cannot be accepted. The meeting of the Board appears to have taken place in the United Kingdom without a proper notice to the Managing Director of the company. The copy of the resolution allegedly passed on 18.9.2006, contains a unilateral declaration that the appellant was informed of the intended sale on 3.8.2006 and that he also indicated that it would be in the interest of the overall benefit of the Indian business that the second respondent bought the Indian arm. But such a unilateral statement cannot be accepted. In the mail dated 3.8.2006, sent by the second respondent to the appellant, he had merely indicated that he was likely to buy out the UK companies from the Receivership. It will be useful to extract the mail dated 3.8.2006 sent by the second respondent to the appellant:

"Dear Hari,

I hope you are keeping well and not suffering too much stress from all that has been happening.

It is now looking very likely that I will be able to buy out the UK companies from the Receivership and all being well this should be completed tomorrow, Friday.

It is also agreed in principle that I will buy back WW India but we have still to sort out the contract.

Can you please advice me as to what I may need to do to get the share transfers from the Company to me. Also I cannot remember if you were still holding some of the shares as a nominee.

No doubt you will need to take some advice but please try to get back to me tomorrow if you can so that I can get the deal done before they forget.

I am sure you will have some questions which I will try to answer.

Best regards, Chris."

It will be clear from the above mail that the second respondent did not inform the appellant in clear terms as to what he had planned to do. But the second respondent projected in the Board meeting held on 18.9.2006 as though the appellant was informed of the decision to buy the shares on 3.8.2006 itself. Therefore, as held by the Supreme Court in *Parameshwari Prasad Gupta v. Union of India* [(1973) 2 SCC 543], the meeting of the Board of Directors dated 18.9.2006, to which the second respondent who was an interested person was a party and in which details regarding the number of shares sold and the sale consideration were not mentioned, was void and the decisions taken thereon cannot bind the appellant.

42. The contention of the learned counsel for the appellant that the sale of the entire shareholding of the third respondent in the

first respondent company cannot be construed strictly as a sale by an Official Assignee in respect of the property of an insolvent, cannot be easily rejected as outlandish. It is seen from the report submitted to the creditors under Section 48 of the (English) Insolvency Act, 1986, filed Ex.A16 before the Company Law Board that the fourth respondent was appointed as Administrative Receivers, by the Bank at the instance of the Directors of the third respondent company, in view of their exposure under the Insolvency Act, 1986 and the Company Directors Disqualifications Act, 1986. Therefore, they were bound, just as the Directors, to act as the agents of the company and were bound to take note of the Articles of Association. Moreover, the Receivership itself appears to have lasted only till the overseas businesses were sold out. In a mail sent by the second respondent, filed as Ex.A17, he had informed the staff of the third respondent that he had completed an agreement with the fourth respondent to take the UK businesses out of Receivership. Therefore, it appears that the third respondent did not go bankrupt, leading to the court appointing some one like an Official Assignee.

43. The learned counsel for the respondents 1 and 2 relied upon the printout of a few e-mails. But these e-mails also do not advance the cause of the respondents. In a mail sent to the second respondent on 21.8.2006, one Mr.Satheesh had requested the second respondent to clarify as to how share transfer could be effected and as to what would be the consideration for transfer. In a mail dated 4.9.2006, presumably sent by the second respondent as a reply, he had only indicated that the fourth respondent had agreed in principle to transfer the Indian operations to the second respondent. But still there is no indication in the said mail that the shares were to be transferred for one British Pound Sterling.

44. Mr.Sanjay Kumar, learned counsel for the respondents 3 and 4 invited my attention to the mails dated 13.9.2006, 2.10.2006, 9.10.2006, 20.10.2006, 28.11.2006, 5.1.2007 and 12.1.2007, to show that the appellant never exhibited any interest in exercising his preemptive right. On the contrary, he allowed things to drift and hence the appellant is not entitled to any relief.

45. In the mail dated 13.9.2006, there is a reference to the shares and the shareholding pattern. But there is no reference to the sale or sale consideration. In the mail dated 2.10.2006 also, there is no indication about the share transfer. In the mail dated 5.1.2007, sent by the second respondent to the appellant, there is a reference to the transfer of two properties. But there is no reference to the share transfer. But in a reply sent by the appellant to the second respondent on 5.1.2007, there is a vague reference to

share transfer without any further detail. This statement in the mail dated 5.1.2007, cannot be taken to be conclusive. In any case, there is no equity in favour of the second respondent. He is not a person who has bailed out the third respondent when it was in distress, to claim equity in his favour. He has just paid one GBP for the entire shareholding of the third respondent in the first respondent. Therefore, he cannot plead equities.

46. Relying upon the decision of the Supreme Court in Sangramsinh P.Gaekwad v. Shantadevi P.Gaekwad [2005 (11) SCC 314], it was contended by Mr.Sanjay Kumar, learned counsel for the respondents 3 and 4 that in any case, a single act of transfer of shares cannot constitute oppression and mismanagement. Therefore, he contended that the ultimate conclusion reached by the Company Law Board cannot be found fault.

47. It is true, that in order to maintain a petition under Sections 397 and 398 of the Companies Act, the acts of oppression complained of, should be a series of acts continuing upto the date of filing of the petition. But it does not mean that when the entire holding of a company incorporated in England, in the shares of a company incorporated in India is sold outside India for a consideration of one GBP, shocking the conscious of any court, the same can be rejected as an isolated instance not warranting an action under Sections 397 and 398 of the Companies Act. Therefore, the said argument also deserves to be rejected.

48. In fine, all the three questions of law are answered in favour of the appellant. Consequently, the appeal is allowed and the order of the Company Law Board is set aside. The petition filed by the appellant in C.P.No.27 of 2007 is allowed, declaring the sale of the shares held by the third respondent company in the first respondent company in favour of the second respondent is null and void. There will be no order as to costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gr.

To

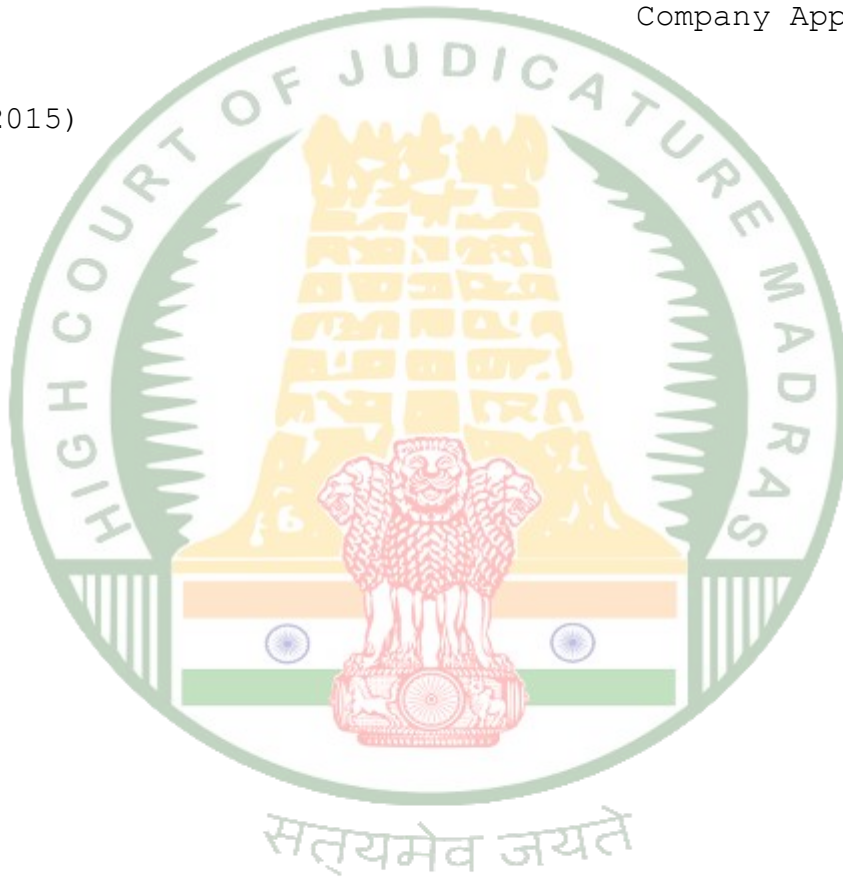
1. Sub Assistant Registrar
Original Side,
High Court, Madras.

2. The Company Law Board,
Chennai.

+lcc to Mr.H.Karthik Seshadri, Advocate, S.R.No.20741

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